IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

OP.No. 7213 of 2002(H)

PETITIONER:

M/S. MALABAR ENGINEERING COMPANY,
A FIRM REP.BY ITS MANAGING PARTNER, SRI.K.V.KOYA,
S/O.MAMMAD KOYA, 1/173 C, KANNUR ROAD,
WEST HILL CHUNGAM, KOZHIKODE DISTRICT.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM.

2. PRINCIPAL SECRETARY, DEPARTMENT OF
FINANCE, GOVERNMENT SECRETARIAT, TRIVANDRUM.

3. DIRECTOR OF INDUSTRIES AND COMMERCE,
THIRUVANANTHAPURAM.

4. KERALA FINANCIAL CORPORATION,
REP.BY ITS DISTRICT MANAGER, DISTRICT OFFICER,
MANJERY ROAD, UP HILL, MALAPPURAM DISTRICT.

5. P.NASEEM, PROPRIETOR,
BROTHERS ICE PLANT, KALLANKAVU, P.O.PANDIKKADY,
MALAPPURAM DISTRICT-676 521.

BY ADV. SRI.K.M.SATHYANATHA MENON
GOVERNMENT PLEADER SRI.BASANT BALAJI
SRI.V.B.UNNIRAJ, SC, KFC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.12780/02 IN OP.7213/02

DISMISSED.

18.12.2006 SD/- S.SIRI JAGAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

P1 LAWYER NOTICE ISSUED BY THE PETITIONER TO R3 AND R4 DT 31.7.01.

P2 REPLY SENT BY R4 DT 19.11.01.

P3 REPLY SENT BY R3 DT 15.10.01.

P4 REPRESENTATION SENT BY THE MANAGING PARTNER OF THE FIRM TO THE CHIEF MINISTER.

P5 INTIMATION RECEIVED BY THE PETITIONER FROM THE CHIEF MINISTER'S OFFICE DT 17.8.01.

TRUE COPY

P.A. TO JUDGE

S. SIRI JAGAN, J.

O.P. No. 7213 OF 2002 H

Dated this the 18th day of December, 2006

J U D G M E N T

The petitioner entered into a contract with the 5th respondent for supply, erection and commissioning of an ice plant by an agreement dated 7.11.1996. The 3rd respondent had sanctioned a loan of Rs.8 lakhs to the 5th respondent as per order dated 30.9.1996, based on the petitioner's quotation dated 8.7.1996 for a sum of Rs.7,03,500/- plus 5% sales tax making a total of Rs.7,38,675/-. The installation work was carried out under the supervision of the Kerala Financial Corporation and all the bills were presented through its District Manager. The work was completed and unit was commissioned on 27.8.1997. The 4th respondent KFC had disbursed directly to the petitioner an amount of Rs.3.75 lakhs towards part payment of the amounts due for the supply and erection of the ice plant out of the loan amounts sanctioned by the 3rd respondent to the 5th respondent. The petitioner's grievance in this writ petition is that although only Rs.3.75 lakhs have been given to the petitioner by the 4th respondent, the 4th respondent had issued a certificate dated 14.8.1998 to the 5th respondent certifying that they had paid to the petitioner an amount of Rs.7,38,675/-. The petitioner

contends that based on the certificates, the 5th respondent is resisting the suit filed by the petitioner for realisation of the balance amount from the 5th respondent. The 5th respondent also availed of all benefits due to him from the 3rd respondent on the basis that this much amount has been spent by him and paid to the petitioner. In view of the above said certificate, the petitioner find it difficult to establish its case before the civil court against the 5th respondent for claiming the balance amount due to him for supply and erection of the ice plant. The petitioner, therefore, seeks the following reliefs:

> (i) to issue a writ of mandamus or any other appropriate writ, order or direction commanding the 2nd respondent to conduct a full-fledged enquiry into the allegation raised in Ext.P4 in the light of Ext.P2 and P3.
>
> (ii) to direct respondents 1 to 3 to cancel all the benefits like sales tax exemption, subsidies, electricity low tariff rates etc. given to the 5th respondent on the basis of the certificate no.1656/1998 dated 14.8.1998 issued by the 4th respondent.
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> (iii) to call for the entire records leading upto the certificate no.1656/1998 dated 14.8.1998 issued by the 4th respondent to the 5th respondent and to quash the same by the issuance of certiorari or any other appropriate writ, order or direction.

2. A counter affidavit is stated to have been filed by the KFC, which is not on record. However, a copy of the same has been made available to me in the course of arguments, the contents of which are

not disputed by the counsel for the 4th respondent. In the same, it has been categorically admitted by the 4th respondent that the 4th respondent has paid only Rs.3.75 lakhs to the petitioner. It is also admitted that a certificate has been issued to the 5th respondent that an amount of Rs.7,38,675/- has been paid to the petitioner by the KFC. According to the 4th respondent, this was a mistake committed in the office of the 4th respondent.

3. Now that the 4th respondent has admitted the mistake, it is only proper that the 4th respondent recalls the above said certificate said to have been issued to the 5th respondent and issues a certificate to the petitioner to the effect that in the above said transaction, the petitioner was paid only Rs.3.75 lakhs by the 4th respondent on behalf of the 5th respondent. This shall be done within a period of one month from the date of receipt of a copy of this judgment.

4. There will be a further direction to the 3rd respondent to ascertain whether the 5th respondent has enjoyed the benefits of subsidy, sales tax exemption, concession tariff of electricity, etc. on the basis that the KFC has paid Rs.7,38,675/- to the petitioner and take appropriate proceedings for recovery of the said amounts from the 5th respondent, if the same was so wrongly paid. The 2nd respondent shall also make an enquiry to be conducted in respect of the whole issue and take appropriate proceedings against those, who are found responsible

for such omissions and commissions. The 2nd and 3rd respondents shall complete the respective proceedings, within three months from the date of receipt of a copy of this judgment.

The original petition is disposed of as above.

(S. SIRI JAGAN, JUDGE)

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S. SIRI JAGAN , J.

OP No.7213/02 H

J U D G M E N T

18th December, 2006